

§ 401.605

this paragraph will be in the form of enhanced vouchers as provided in section 8(t) of the United States Housing Act of 1937.

[65 FR 15485, Mar. 22, 2000, as amended at 65 FR 53901, Sept. 6, 2000]

§ 401.605 Project-based assistance provisions.

The project-based assistance rents for a restructured project must be the restructured rents determined under the Restructuring Plan in accordance with §§ 401.410 or 401.411.

§ 401.606 Tenant-based assistance provisions.

If the Restructuring Plan provides for tenant-based assistance, each assisted family residing in a unit assisted under the expiring project-based assistance contract when the contract terminates will be offered tenant-based assistance if the family meets the eligibility requirements under part 982. Whenever permitted by section 515(c)(4) of MAHRA, the tenant-based assistance will be in the form of enhanced vouchers as provided in section 8(t) of the United States Housing Act of 1937.

Subpart F—Owner Dispute of Rejection and Administrative Appeal

§ 401.645 How does the owner dispute a notice of rejection?

(a) *Notice of rejection.* HUD will notify the owner of the reasons for a rejection under §§ 401.101, 401.402, 401.403, 401.405, 401.451, or § 402.7 of this chapter. An owner will have 30 days from receipt of this notice to provide written objections or to cure the underlying basis for the objections. If the owner does not submit written objections or cure the underlying basis for the objections during that period, the decision will become a final determination under section 516(c) of MAHRA and is not subject to judicial review.

(b) *Final decision after objection; right to administrative review.* If an owner submits written objections or asserts that the underlying basis for the objections is cured, after consideration of the matter HUD will send the owner a final decision affirming, modifying, or

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reversing the rejection and setting forth the rationale for the final decision.

§ 401.650 When may the owner make an administrative appeal of a final decision under this subpart?

The owner has a right to make an administrative appeal of the following:

(a) A final decision by HUD under § 401.645(b);

(b) A decision by HUD and the PAE to offer a proposed Restructuring Commitment that the owner does not execute; and

(c) A decision by HUD to accelerate the second mortgage under § 401.461(b)(4), to the extent provided that section.

§ 401.651 Appeal procedures.

(a) *How to appeal.* An owner may submit a written appeal to HUD, within 10 days of receipt of written notice of the decision described in § 401.650, contesting the decision and requesting a conference with HUD. At the conference, the owner may submit (in person, in writing, or through a representative) its reasons for appealing the decision. The HUD or PAE official who issued the decision under appeal may participate in the conference and submit (in person, in writing, or through a representative) the basis for the decision.

(b) *Written decision.* Within 20 days after the conference, or 20 days after any agreed-upon extension of time for submission of additional materials by or on behalf of the owner, HUD will advise the owner in writing of the decision to terminate, modify, or affirm the original decision.

(c) *Who is responsible for reviewing appeals?* HUD will designate an official to review any appeal, conduct the conference, and issue the written decision. The official designated must be one who was neither directly involved in, nor reports to another directly involved in, making the decision being appealed.

§ 401.652 No judicial review.

The reviewing official's decision under § 401.651 is a final determination for purposes of section 516(c) of

MAHRA and is not subject to judicial review.

PART 402—PROJECT-BASED SECTION 8 CONTRACT RENEWAL WITHOUT RESTRUCTURING (UNDER SECTION 524(a) OF MAHRA)

Sec.

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402.7 Refusal to consider an owner's request for a section 8 contract renewal because of actions or omissions of owner or affiliate.

402.8 Tenant protections if an expiring contract is not renewed.

AUTHORITY: 42 U.S.C. 1437f note and 3535(d).

SOURCE: 63 FR 48953, Sept. 11, 1998, unless otherwise noted.

§ 402.1 What is the purpose of part 402?

This part sets out the terms and conditions under which HUD will renew project-based section 8 contracts under the authority provided in section 524(a)(1) or (2) of MAHRA. This part permits renewal notwithstanding part 24 of this title, but subject to section 516 of MAHRA (see § 402.7).

[65 FR 15498, Mar. 22, 2000]

§ 402.2 Definitions.

The definitions in § 401.2 of this chapter apply to this part.

§ 402.3 Contract provisions.

The provisions of chapter VIII of this title will apply only to the extent, if any, provided in the contract. Part 983 of this title will not apply.

§ 402.4 Contract renewals under section 524(a)(1) of MAHRA.

(a) *Initial renewal.* (1) HUD may renew any expiring section 8 project-based assistance contract at initial rents that do not exceed comparable market rents.

(2)(i) If HUD or a Participating Administrative Entity (PAE) determines that renewal of an expiring contract under this section for an eligible project would be sufficient to maintain both adequate debt service coverage on the HUD-insured or HUD-held mortgage and necessary replacement reserves to ensure the long-term physical integrity of the project, taking into account any comments received under § 401.502(c) of this chapter, HUD will renew the contract under this section without developing a Restructuring Plan, subject to § 402.7.

(ii) If HUD or the PAE determines that paragraph (a)(2)(i) of this section does not apply for an eligible project, HUD or the PAE may require a Restructuring Plan before the owner's request for renewal of an expiring section 8 contract will be given further consideration. If HUD or the PAE determines that the project's continued operation without a Restructuring Plan is not feasible and the owner does not cooperate in the development of an acceptable Restructuring Plan, HUD will pursue whatever administrative actions it considers necessary.

(b) [Reserved]

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§ 402.5 Contract renewals under section 524(a)(2) of MAHRA.

(a) *Renewal for exception project at owner's request.* HUD will renew project-based assistance under this section instead of § 402.4 if requested by the owner of a project described in paragraph (b) of this section. The term of the initial and subsequent contract renewals under this section will be determined by the appropriate HUD official.

(b) *Exception projects included.* This section applies to:

- (1) A project described in section 524(a)(2)(A) through (D) of MAHRA; and
- (2) A project described in section 524(a)(2)(E) of MAHRA.

(c) *Initial rent levels for exception projects.* If the owner of such a project requests renewal of project-based assistance under this section, HUD will initially renew the expiring contract at the lesser of: